Public Prosecutor v Mohd Abbas bin Danus Baksan

HIGH COURT (JOHOR BAHRU) — CRIMINAL TRIAL NO MT(3)45–13 OF 2004
KP GENGADHARAN JC
27 AUGUST 2004

Criminal Law — Penal Code (Malaysia) — s 302 — Accused charged with murder — Charge based on circumstantial evidence — Whether prosecution established a prima facie case — Whether accused murdered deceased — Whether there was basis for accused to state that PW23 and Jojo involved — Penal Code s 302

Criminal Procedure — Trial — Statement from dock — Accused made unsworn statement — Weight to be attached to statement – Whether accused's statement sufficient to cast reasonable doubt on prosecution's case

The accused was charged with the murder of Nurul Huda bte Gani ('the deceased'), aged 10, an offence punishable under the s 302 of the Penal Code. At the close of the prosecution case, the defence submitted that the prosecution had not made out a prima facie case, and at the close of the defence case, the defence contended that the prosecution's case was based purely on circumstantial evidence. During the course of the trial, the accused opted to make an unsworn statement from the dock and claimed that it was one of the prosecution witnesses ('PW23') who raped and killed the deceased, together with one other person by the name of 'Jojo'. The accused also stated that PW23 was an employee of Tenaga Nasional Bhd ('TNB'). The defence relied on the fact that the initial charge against the accused at the committal proceedings stage stated that the accused was charged together with two others who were still at large, to contend the existence of three persons (including the accused) referred to in the accused's statement.

Held, convicting the accused:

(1) Taken collectively, the evidence in the circumstances constituted a prima facie case against the accused that warranted the calling of the accused's defence to answer the charge against him. Also, the behaviour and conduct of the accused was not consistent with that of a person who had had nothing to hide. The cumulative effect of all the evidence led to the irresistible conclusion that it was the accused who committed the crime (see para 39).

(2) Even though the accused's statement was an unsworn statement from the dock it must be given due consideration. The weight to be attached to the contents of an unsworn statement would be less than that for sworn evidence from the witness' box tested by cross examination (see paras 45 and 46).

(3) There was no evidence that PW23 or Jojo were present in the guardhouse on 17 January 2004 before the body of the deceased was found. When PW23 was cross examined, the issue of Jojo's alleged presence on 17January 2004 in the guardhouse together with PW23 was not raised

at all. The accused's statement that PW23 was an employee of TNB was a subtle attempt by the accused to shift the blame to PW23 when the question of whether PW23 was employed at the Pencawang TNB was not at all put to PW23 when he was cross examined. It was also not put to PW26, the investigating officer. There was no basis for the accused to state that PW23 was also employed at the Pencawang TNB. This was an afterthought (see paras 47 and 48).

(4) The accused tried to tailor his defence in an attempt to create doubts about the prosecution's case knowing full well, having opted to give his evidence in the form of an unsworn statement from the dock, that his story could not be tested by cross examination. The end result of the statement by the accused was just a mere denial and assertions not supported by evidence. Mere denial without other proof to reasonably dislodge the evidence presented by the prosecution is insufficient to inject reasonable doubt into the prosecutions' case (see para 52).

(5) Having carefully reconsidered the evidence adduced by the prosecution and the unsworn evidence given by the accused and for the reasons given, the accused failed to cast a reasonable doubt on the prosecution's case in respect of the charge against him. The court found him guilty of having murdered the deceased on the date, between the times and at the place mentioned in the charge (see para 57).

[**Bahasa Malaysia summary**

Tertuduh dituduh dengan pembunuhan Nurul Huda bte Gani ('si mati'), berumur 10 tahun, satu kesalahan yang boleh dihukum di bawah s 302 Kanun Keseksaan. Pada pengakhiran kes pendakwaan, pihak pembelaan berhujah bahawa pihak pendakwaan tidak membuktikan satu kes prima facie, dan pada pengakhiran kes pembelaan, pihak pembelaan berhujah bahawa kes pihak pendakwaan berdasarkan keterangan mengikut keadaan. Semasa perbicaraan itu, tertuduh memilih untuk membuat penyataan tidak bersumpah daripada kandang dan telah mengatakan bahawa salah satu daripada saksi pihak pendakwaan ('PW23') telah merogol dan membunuh si mati, bersama dengan seorang yang bernama 'Jojo'. Tertuduh juga berkata bahawa PW23 adalah seorang pekerja Tenaga Nasional Bhd ('TNB'). Pihak pembelaan bergantung kepada fakta bahawa pertuduhan pertama terhadap tertuduh pada tahap prosiding komital menyatakan bahawa tertuduh dituduh bersama dengan dua orang lagi yang masih bebas, untuk menegaskan kewujudan tiga orang (termasuk tertuduh) yang dirujuk di dalam penyataan tertuduh.

Diputuskan, mensabitkan tertuduh:

(1) Secara bersama, keterangan di dalam keadaan menubuhkan kes prima facie terhadap tertuduh yang mewajarkan pemanggilan pembelaan tertuduh untuk menjawab pertuduhan terhadap beliau. Lagipun, tingkah laku dan kelakuan tertuduh tidak konsisten dengan seorang yang tidak mempunyai apa-apa untuk disembunyikan. Kesan kumulatif keterangan

ini membawa kepada kesimpulan yang jelas bahawa tertuduh yang melakukan kesalahan itu (lihat perenggan 39).

(2) Walaupun penyataan tertuduh adalah penyataan tidak bersumpah daripada kandang ia mesti diberi pertimbangan. Kepentingan yang perlu diberikan kepada kandungan penyataan tidak bersumpah kurang daripada penyataan bersumpah yang diberi daripada kandang yang diuji oleh pemeriksaan balas (lihat perenggan 45 dan 46).

(3) Tiada keterangan bahawa PW23 atau Jojo hadir di dalam pondok pengawal pada 17 Januari 2004 sebelum badan si mati dijumpai. Semasa PW23 diperiksa balas, isu kehadiran Jojo yang dikatakan pada 17 Januari 2004 di pondok pengawal bersama dengan PW23 tidak berbangkit. Penyataan tertuduh bahawa PW23 adalah pekerja TNB adalah percubaan oleh tertuduh untuk mengagihkan tanggungjawab kepada PW23 apabila persoalan sama ada PW23 diambil bekerja di Pencawang TNB tidak ditanya kepada PW23 semasa beliau diperiksa balas. Ia juga tidak ditanya kepada PW26, pegawai penyiasatan. Tiada dasar untuk tertuduh berkata bahawa PW23 diambil bekerja di Pencawang TNB. Ini merupakan sesuatu yang difikirkan kemudian (lihat perenggan 47 dan 48).

(4) Tertuduh cuba mereka pembelaan beliau untuk cuba menyebabkan keraguan di dalam kes pendakwaan dengan pengetahuan penuh bahawa, setelah memilih memberi keterangan beliau sebagai keterangan tidak bersumpah daripada kandang, keterangan beliau tidak dapat diperiksa balas. Oleh itu, penyataan tertuduh hanya penafian dan penegasan yang tidak disokong oleh keterangan. Penafian tanpa keterangan lain untuk mengatasi keterangan pihak pendakwaan tidak mencukupi untuk menyebabkan keraguan munasabah kepada kes pendakwaan (lihat perenggan 52).

(5) Setelah mempertimbangkan semula keterangan yang dikemukakan oleh pihak pendakwaan dan keterangan tidak bersumpah oleh tertuduh dan berdasarkan alasan-alasan yang telah diberikan, tertuduh gagal membangkitkan keraguan munasabah di dalam kes pendakwaan berkait dengan pertuduhan terhadap beliau. Mahkamah telah mendapati tertuduh bersalah membunuh si mati pada tarikh itu, di antara masa dan tempat yang disebutkan di dalam pertuduhan itu (lihat perenggan 57).]

Notes

For cases on s 302 of the Penal Code (Malaysia), see 4 *Mallal's Digest* (4th Ed, 2003 Reissue) paras 1424–1477.

For cases on statements from the dock, see 5 *Mallal's Digest* (4th Ed, 2001 Reissue) paras 4211–4214.

For meaning of and defences to murder, see 11 *Halsbury's Laws of Malaysia*, paras [190.296]–[190.297].

Cases referred to

Chang Kim Siong v PP [1968] 1 MLJ 36 (refd)
Jayaraman & Ors v PP [1982] 2 MLJ 306 (refd)
Liew Kaling & Ors v PP [1960] MLJ 306 (refd)
Looi Kow Chai & Anor v PP [2003] 2 MLJ 65 (refd)
Masroni bin Ahmad Rafi v PP [1996] MLJU 584 (refd)
Miller v Minister of Pensions [1947] 2 All ER 372 (refd)
Mohamed Salleh v PP [1969] 1 MLJ 104 (refd)
Ng Hoi Cheu & Anor v PP [1968] 1 MLJ 53 (refd)
PP v Ling Tee Huah [1982] 2 MLJ 324 (refd)
PP v Saimin & Ors [1971] 2 MLJ 16 (refd)
Sunny Ang v PP [1966] 2 MLJ 195 (refd)
Virsa Singh v State of Punjab AIR 1958 SC 465 (refd)

Legislation referred to

Criminal Procedure Code ss 180, 227

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Mohamed Harmy Yusoff (Soo Thien Ming & Nashrah) holding watching brief for the deceased's family.
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Lalitha Nagamuthu (Azlena Maria Abu Bakar with her) (Shafee & Co) holding watching brief for Tenaga Nasional Bhd.

KP Gengadharan JC:

[1] The charge against the accused is as follows:

> 'Bahawa kamu pada 17.1.2004 jam di antara 9.20 pagi hingga 1.00 petang, di Pondok Pengawal Pencawang Masuk Utama TNB, Kampung Pekajang, Tanjung Kupang, di dalam daerah Johor Bahru, di dalam Negeri Johor Darul Takzim, telah melakukan kesalahan membunuh dengan menyebabkan kematian seorang perempuan Melayu bernama NURUL HUDA BINTI GANI, NO. SURAT BERANAK: K362108, berumur 10 tahun. Oleh yang demikian kamu telah melakukan satu kesalahan yang boleh dihukum di bawah Seksyen 302 Kanun Keseksaan.'

THE PROSECUTION'S CASE AND THE FACTS:

[2] In the morning of 17 January 2004 at about 8.50am in Kg Pekajang, Tanjung Kupang, Gelang Patah, Johor, a young girl aged ten by the name of Nurul Huda bte Gani, ('the deceased') was sent by her elder sister, Aien ('PW10'), on an errand to the neighbourhood provision shop known as 'Wak Midek' to buy some fish, lemon grass (serai) and eggs. The deceased who was wearing a white T-shirt with pink sleeves and blue trousers went to the shop on her blue coloured bicycle.

[3] The deceased would have had to pass a Tenaga Nasional Bhd Substation ('Pencawang TNB') on the way to the shop and back as the Pencawang TNB is located about 300m from the deceased's house and about 250m from the shop.

[4] When the deceased did not return after about 20 mins PW10 was worried and asked a boy to go to the shop to find out about the deceased. The boy went to the shop and returned to inform her that the shopkeeper had told him that the deceased had come but had left the shop. PW10 went to her cousin's house and asked her cousin ('Jamaliah') to accompany her to look for the deceased. Both of them then went on a motorcycle looking for the deceased. They went to Wak Midek's shop and the lady ('PW13') in the shop told them that deceased had come and gone home. At about 9.30am PW10 and her cousin went home and asked PW10's sister, Norashikin, to join them in the search for the deceased.

[5] At about 11.09am PW10 called her brother, Ameer ('PW11'), and together they began to search for the deceased in a borrowed Proton Wira car. They felt that the deceased must be somewhere between the shop and their house. In between the shop and the house is the Pencawang TNB. When they were passing the Pencawang TNB PW10 saw the accused dressed in a security guard's uniform sitting in front of the guardhouse inside the Pencawang TNB. They stopped in front of the main gate and enquired from the accused whether he had seen the deceased after describing the deceased and the fact that she was riding a blue bicycle. The accused told them that he had not seen the deceased.

[6] Ameer ('PW11') requested the accused to permit them to enter Pencawang TNB to look for the deceased but he refused to let them in. Thus, they continued to look for the deceased outside the Pencawang TNB whilst calling out the deceased's name. Meanwhile, Norashikin told her cousin to go home and ask her other brother, Aziz ('PW12'), to come to the Pencawang TNB to join them in the search for the deceased.

[7] They then, once again, asked the accused for permission to enter the Pencawang TNB but again he refused saying that only the employer or policemen can enter the compound. When Aziz ('PW12') arrived he was asked to remain in front of the main gate of Pencawang TNB to keep an eye on the accused. Jamaliah was asked to go to the deceased's mother's shop in Bukit Kuching to find out whether the deceased was there. In the meantime PW10 and PW11 went to the Police Station at the Second Link in Gelang Patah commonly referred to as 'Balai Polis CIQ' by the locals.

[8] At the Police Station they secured the assistance of police Corporal Peter Andrew Fletcher ('PW9') and L/Cpl Rusli bin Alias ('PW17') who agreed to accompany them to Pencawang TNB.

[9] PW10 and PW11 returned to Pencawang TNB together with the two policemen, PW9 and PW17, at about 1pm and PW9 asked the accused to

let him in. Although PW9 was in full police uniform the accused still refused to let him into the Pencawang TNB.

[10] The accused told PW9 to obtain permission from the accused's employer by the name of Mohamad bin Saad. Permission was then obtained from Mohamad bin Saad over the mobile phone and despite the accused being instructed to permit entry, the accused still denied PW9 entry.

[11] After some exchange of words between PW9 and the accused, PW9 climbed over the gate (about 11ft in height) followed by PW11, PW12 and PW17. By then a group of people from the village had gathered in front of the Pencawang TNB.

[12] After climbing over the gate PW9 rushed into the guardhouse whilst PW11 and PW12 looked for the deceased around the area outside the guardhouse. PW9 went into the guardhouse and caught hold of the accused who was, by then, holding on to a long parang and disarmed him before handing him over to PW17 outside the guardhouse. After that PW9 went back into the guardhouse and upon opening the sliding door of the toilet inside the guardhouse he saw the deceased on the floor inside the toilet in a squatting position with both her elbows on her knees and her hands on her cheeks. He shouted out 'Saya sudah jumpa budak'.

[13] Upon hearing this, PW11 rushed into the toilet in the guardhouse and he saw the deceased naked in the toilet with a towel stuck in her mouth. She appeared to be unconscious. PW11 carried the deceased and placed her on a wooden platform in the guardhouse. He then put the deceased's T-Shirt on her and carried her out of the guardhouse to the entrance of Pencawang TNB where he requested a passing van to take them to the Health Clinic in Gelang Patah.

[14] At the clinic En Mohd Jamil bin Abadi ('PW15'), a Medical Assistant, certified that the deceased was dead. The deceased's body was then taken to the Tanjung Kupang Police Station in an ambulance together with the members of the deceased's family.

[15] At the police station the body of the deceased was identified to the Investigating Officer (PW26 – ASP Idris bin Abd Karim) before the body was sent to Hospital Sultanah Aminah, Johor Bahru for a post mortem. The Investigating Officer and some other police officers went to Pencawang TNB to carry out investigations, in the course of which several exhibits were seized from the guardhouse and outside it. PW26 then returned to Balai Polis Tanjung Kupang where he was informed that two suspects had been arrested. They were the accused and one Suyaimi bin Mohd Zain ('PW23'). PW26 took the accused and PW23 to Ibu Pejabat Polis Daerah Johor Bahru Utara. He then contacted Dr Shahidan bin Md Noor ('PW1') to fix the time and date for the post mortem.

[16] The post mortem was conducted at about 8pm by Dr Shahidan bin Md Noor ('PW1') after the body of the deceased was identified to him by PW26.

[17] PW26 also instructed L/Cpl Samy ('PW6') to take photographs of the post mortem but the photographs did not materialize due to a fault in the camera.

[18] During the post-mortem several samples of specimens from the deceased's body were taken and handed over to PW26 for onward transmission to the chemist for analysis. PW26 also received the clothes worn by the deceased.

[19] At about 6.30pm on 17 January 2004 the clothes then being worn by the accused and Suyaimi ('PW23') were seized for the purposes of being sent to the chemist for analysis.

[20] On 19 January 2004 finger nail clippings and samples of blood were taken from the accused and Suyaimi ('PW23') for the purposes of being sent to the chemistry department.

[21] About 29 items pertaining to the case seized by the police together with the blood and nail samples of both the accused and Suyaimi bin Mohd Zain ('PW23') were sent to the Chemistry Department in Petaling Jaya, Selangor on 20 January 2004 for Deoxyribonucleic acid ('DNA') tests. The chemist, En Bakhtiar bin Kassim ('PW4'), after carrying out the DNA tests confirmed, inter alia, that the sperm of the accused was present on the trousers worn by the deceased on 17 January 2004 and which trousers was recovered from the guardhouse of Pencawang TNB on 17 January 2004. The chemist also found the accused's sperm on the towel, bedsheet and blanket seized on 17 January 2004 after the deceased's body was found in the toilet of the guardhouse of Pencawang TNB. Further, the accused's sperm was also found on his shorts seized from him on 17 January 2004.

[22] The chemist, after analysing all the exhibits sent to him, concluded vide exh P16 the profile to be thus:

'(i) Profil DNA yang diperolehi daripada kesan air mani pada seluar pendek 'El', kesan air mani pada cadar 'E2', kesan air mani pada selimut 'E2A', kesan air mani pada tuala 'EH', kesan air mani pada seluar panjang 'E12', rambut 'E4A', keratan kuku 'G3', kesan darah pada baju-T 'H1', kesan darah pada baju kemeja 'H2' dan kesan darah pada seluar panjang 'H4' berpadanan (match) di antara satu sama lain dan berpadanan dengan profil DNA spesimen darah 'G2' (berlabel 'Mohd Abbas bin Danus Baksan'). Ini menunjukkan bahawa DNA yang dikenalpasti berasal daripada sumber yang sama. Probabiliti seorang (yang dipilih secara rambang dan tidak mempunyai kaitan kekeluargaan) mempunyai profail DNA yang sama dengan profil DNA tersebut adalah 1 dalam 4.7 sextillion (4.7×10^{21}) dikira berdasarkan kepada pengkalan data STR penduduk Malaysia berbangsa Melayu.

(ii) Profil DNA yang diperolehi daripada kesan darah pada selimut 'E2A' dan keratan kuku 'F3' berpadanan (match) diantara satu sama lain dan berpadanan dengan profil DNA spesimen darah 'F2' (berlabel 'Nurul Huda bte Gani'). Ini menunjukkan bahawa DNA yang dikenalpasti berasal daripada sumber yang sama. Probabiliti seorang (yang dipilih

secara rambang dan tidak mempunyai kaitan kekeluargaan) mempunyai profil DNA yang sama dengan profil DNA tersebut adalah 1 dalam 54 quitillion (54 x 10^{18}) dikira berdasarkan kepada pengkalan data STR penduduk Malaysia berbangsa Melayu.

(iii) Profil DNA separa (partial DNA profile) yang diperolehi daripada kesan air mani 'E8[c]', kesan air mani pada tikar 'E9' dan kesan darah pada singlet 'J1' (masing-masing sembilan, lima dan tujuh lokus genetic) didapati konsisten dengan profil DNA spesimen darah 'G2' (berlabel 'Mohd Abbas bin Danus Baksan').

(iv) Profil DNA separa (partial DNA profile) yang diperolehi daripada keratan kuku 'G4' (sepuluh lokus genetic) dan didapati konsisten dengan profil DNA spesimen darah 'G1' (berlabel 'Suyaimi bin Mohd Zain').

(v) Profil DNA separa (partial DNA profile) seorang lelaki telah diperolehi daripada kesan air mani 'E8[b]' didapati berbeza dengan profil DNA spesimen darah 'G1' (berlabel 'Suyaimi bin Mohd Zain') dan spesimen darah 'G2' (berlabel 'Mohd Abbas bin Danus Baksan'). Ini menunjukkan bahawa DNA yang dikenalpasti berasal daripada sumber yang berlainan.'

[23] For the prosecution to succeed in proving a charge under s 300 of the Penal Code it has to prove the following three elements:

1) That the death of a human being has actually taken place;

2) That such death has been caused by, or in consequence of, the act of the accused;

3) That such act was done with the intention of causing death; or it was done with the intention of causing such bodily injury as:

   (a) the accused knew to be likely to cause death; or

   (b) was sufficient in the ordinary course of nature to cause death; or the accused caused death by doing an act known to him to be so imminently dangerous that it must in all probability cause:

      (a) death, or

      (b) such bodily injury as is likely to cause death, the accused having no excuse for incurring the risk of causing such death or injury.

(See *Ratanlal and Dhirajlal's Law of Crimes*, (24th Ed) at p 1442).

[24] There is no dispute in this case that the deceased in this case, Nurul Huda bte Gani, aged 10 had died on 17 January 2004 as a result of manual strangulation. The deceased's brother, sister and father had identified her to the investigating officer, ASP Idris bin Abd Karim ('PW26'), who in turn identified her to the forensic pathologist, Dr Shahidan bin Md Noor ('PW1'), before he conducted the post mortem examination at about 8pm on 17 January 2004.

[25] The post-mortem report is as follows:

POST MORTEM EXAMINATION REPORT ON NURUL HUDA BTE GANI

Acting on a request of 'Polis Di Raja Malaysia (in relation to Tg Kupang Police Report No. 0021/2004), I, the undersigned at 8pm on 17 January 2004 (Saturday) within the mortuary of Hospital Sultanah Aminah in Johor Bahru made a post mortem examination and dissection on Nurul Huda bte Gani.

Birth Certificate No. K 362108

Age: 10 YEARS

Sex: FEMALE

Race: MALAY

Address: 55, Kg Pekajang, Gelang Patah

Date and time when brought in: 17 January 2004/5pm

The body was identified by:

a) Police: ASP Idris bin Abd Karim G/12164

EXTERNAL EXAMINATION

The body was that of a 10-year-old Malay girl 125cm long (height) and of medium build with thin and slim disposition weighed approximately 40kg. She had long black hair (42cm) and luxuriant. She was clad in a white short-sleeved t-shirt its sleeves pink and its front printed a female with an umbrella. Her face was congested with minimal showers of petechiae especially marked on the right side, Subconjunctival haemorrhages were evident. The fingertips were cyanosed.

Several marks of trauma were evidence namely:

1) Bruise 4 x 1.5cm on upper left chest about midclavicle;
2) Vague linear abrasions 2cm, 2cm and 1cm over the thyroid prominence;
3) Bruise 1 x 0.5cm over the ramus of left mandible;
4) Area of redness below the left ear;
5) Bruise 2 x 1 cm over the angle of right mandible, and
6) Three abrasions each 0.5cm in diameter on outer right ankle.

The vagina showed reddening about its opening with hymen torn and colourless fluid oozed from within. The skin between the vagina and the anus was also torn 3 x 2cm. The anus showed tear around it edges.

Rigor mortis was fully established and darkish hypotasis present on the back.

INTERNAL EXAMINATION

Head

The scalp was intact and uninjured when reflected in the usual manner. The skull 3-5mm thick was also intact. The meninges were unremarkable. The brain (l,275g) was unremarkable when both examined grossly and serially sectioned. The vessels on the base of the brain were patent and intact.

Mouth, throat and neck structure

There were areas of soft tissue bleeding on the lower pole of right thyroid gland and on the thyroid cartilage about the bases of greater horns. Minimal soft tissue bleeding also noted about the front of the thyroid prominence. Both the hyoid bone and the thyroid cartilage however were intact and uninjured.

Chest

The chest wall together with its ribcage were intact. The on pleural cavity each side was clear and dry. The oesophagus was intact and unremarkable. The trachea and its air passages contained copious bloody froths. The lungs were congested (right 180g, left 172g). Some petecthiae present on front surface of the pericardial sac which was otherwise intact and free from excess effusion. The heart (118g) was appropriate size and configuration and unremarkable in all other aspects.

Abdomen

The abdominal wall was intact and its cavity was clean. The stomach contained substantial chymes or partially digested foodstuffs. The liver (820g) and all other organs such as kidneys, pancreas, the intestines and adrenal glands were intact and unremarkable and still warm.

The uterus was of usual infantile size and the ovaries unremarkable when examined in situ.

Skeleton

No bony injury seen or detected.

OTHER INVESTIGATIONS

Samples of blood, nail clippings and head hair each were submitted for analysis.

Swab from the vagina and the anus were also submitted.

CONCLUSIONS

I was informed that this Malay girl went to buy groceries by cycling not very far from her home in Kg. Pekajang, Gelang Patah morning 17 January 2004. When she never returned the family tried to search for her. Her lifeless body was found in a guard room of the TNB substation nearby a few hours later.

At post mortem examination showed minimal surface marks of trauma along with congestion of the face, petechiae and cynosis. Internally there were soft tissue bleedings in the neck structures along with copious froths in the airways. The vagina and the anus were also injured with signs suggestive of entry by blunt object(s). Inview of these findings along with the circumstances, I formulated the cause of death as due to manual strangulation.

CAUSE OF DEATH

1(a)Manual strangulation.

'Attested on soul and conscience'

sgn

DR SHAHIDAN BIN MD NOOR A.M.N.

Pakar Perunding Patologi (Forensik)

Jabatan Patologi

Hospital Sultanah Aminah

Johor Bahru.

[26] The pathologist was of the considered view that the injuries to the neck of the deceased was caused by a single hand of one person. He also testified that in his view the minimal marks of trauma indicated by the lack of defensive injuries on the body of the deceased that the deceased had been silenced first before she was sexually attacked.

[27] The deceased's body was found in the toilet of the guardhouse of Pencawang TNB at about 1.20pm. The evidence adduced through several witnesses shows that the accused was alone in the guardhouse between the time the deceased disappeared and up to the time her body was discovered in the guardhouse together with her bicycle.

[28] The learned defence counsel in cross examination of some witnesses made an attempt to suggest that Suyaimi bin Mohd Zin ('PW23') was the person guilty of murdering the deceased on that day in the guardhouse. It was expressly put to PW23 himself that he had met the deceased at about 9am on 17 January 2004 near the Pencawang TNB and brought her to the guardhouse of Pencawang TNB together with her bicycle and his yellow coloured bicycle after which he raped her in the guardhouse between 9am and 1pm before strangling her to death. It was further put to PW23 that after he had killed the deceased he hid her bicycle inside the guardhouse and that he then went home on his yellow bicycle.

[29] Learned counsel for the accused also suggested to PW23 that he had attempted to run away when the police officers came to his house on 17 January 2004 after they had found the body of the deceased because he was guilty of having killed the deceased in the guardhouse that day. PW23 denied all the allegations and maintained that he was in his house on that day until the police came to his house and explained that he tried to flee when the police officers came to his house as was he was a drug addict. PW23's mother ('PW22') in her evidence, confirmed that her son ('PW23') was at home on 17 January 2004 until he woke up late that day and that both he and the yellow bicycle were at home that day. Although there were some discrepancies between the evidence of the mother and son in respect of the time PW23 woke up and whether he had breakfast alone or with PW22, the evidence that PW23 and his yellow bicycle were at home on that day during the material period remains unshaken in cross examination.

[30] As I stated earlier, in the cross examination of PW23 it was put to him that after the murder of the deceased on 17 January 2004 he had gone home on his yellow bicycle. However, a yellow bicycle was still in the Pencawang TNB's compound when PW26 went here at about 3.45pm on that day. There is no evidence that this bicycle belonged to PW23.

[31] There is the evidence of the chemist that the accused's seminal stains were found on the trousers worn by the deceased that morning. Further the accused's seminal stains and a drop of the deceased's blood were also found on the blanket (selimut) seized from the toilet of the guardhouse upon the discovery of the deceased's body.

[32] The Investigation Officer ('PW26') confirmed in his testimony that he inspected the fencing surround the Pencawang TNB on 17 January 2004 and found that the fence was intact thus leaving the main gate near the guardhouse as the only entrance into the compound. The evidence points to the accused being alone in the compound of Pencawang TNB and in the guardhouse on 17 January 2004 until the policemen and others entered the compound.

[33] Further, the conduct of the accused denying to PW10 & PW11 that he had seen the deceased, refusing them permission to enter and search and refusing even PW9, the police officer (in uniform), permission to enter the compound of Pencawang TNB despite having been instructed by his superior to let the police in gives rise to a logical inference that the accused was trying to conceal something within the guardhouse and/or compound of Pencawang TNB. That something was the body of the deceased in the toilet of the guardhouse.

[34] The prosecution closed its case after calling 26 witnesses. At that stage of the proceedings s 180 of the Criminal Procedure Code required me to decide whether the prosecution had made out a prima facie case against the accused. To do this I had to subject the evidence adduced to a maximum and thorough evaluation whilst bearing in mind that it was not incumbent upon the prosecution to prove its case beyond reasonable doubt at that stage of the proceedings.

[35] In *Looi Kow Chai & Anor v Public Prosecutor* [2003] 2 MLJ 65, Gopal Sri Ram JCA stated as follows at p 81:

> It therefore follows that there is only one exercise that a judge sitting alone under s 180 of the CPC [Criminal Procedure Code] has to undertake at the close of the prosecution case. He must subject the prosecution evidence to *maximum evaluation* and ask himself the question: If I decide to call upon the accused to enter his defence and he elects to remain silent, am I prepared to convict him on the totality of the evidence contained in the prosecution's case? If the answer is in the negative then no prima facie case has been made out and the accused would be entitled to an acquittal. (Emphasis added.)

[36] His Lordship went on in the judgement to add as follows, at p 83:

> In our judgement, the foregoing passage correctly states the law as it presently stands. But, we would emphasise and make it amply clear that there is no burden on the prosecution to prove its case beyond a reasonable doubt at the close of the prosecution's case. Whether it has done so, is a question that must be dealt with at the close of the whole case.

SUBMISSION BY DEFENCE AT CLOSE OF PROSECUTION'S CASE

[37] At the close of the prosecution's case the defence submitted that the prosecution had not made out a prima facie case and, consequently, urged the court to acquit and discharge the accused of the charge. The defence contended that the prosecution's case was based purely on circumstantial evidence arguing that, in essence, the prosecution had only proven that the accused was at the scene where the deceased was found and that traces of the accused's seminal fluid were on the deceased's trousers and on some other exhibits seized from the guardhouse and submitted that this was insufficient to establish a prima facie case against the accused. Learned counsel referred to the case of *Chang Kim Siong v Public Prosecutor* [1968] 1 MLJ 36 and *Jayaraman & Ors v Public Prosecutor* [1982] 2 MLJ 306 both of which are authorities for the proposition that when the prosecution relies on circumstantial evidence the onus on it is a very heavy one as the evidence must point irresistibly to the conclusion of the guilt of the accused. It was also the defence's submission that the prosecution had failed to prove that only the accused was at the guardhouse before the deceased was found there and that the prosecution did not prove that only the accused had access to the TNB's substation and the guardhouse, in particular. The defence contended that the fact that the accused's seminal fluid was found on his shorts and on some other items such as a towel and straw mat was not sufficient to infer that the accused murdered the deceased stating that there was also some trace of semen of an unknown person in one of the two straw mats (P13) seized by the police from just outside the guardhouse. A further point advanced was that Suyaimi's ('PW23') denial of his involvement in the death of the deceased in cross examination is doubtful because of the discrepancies in the evidence by him and by his mother in respect of the time PW23 woke up and whether he had breakfast alone or with his mother. The defence submitted that because of these discrepancies the prosecution ought to have called PW23's father and sister to close the gap. A further point raised was that the prosecution did not provide any explanation as to why PW23 was arrested immediately after the accused's arrest in connection with the death of the deceased on 17 January 2004.

PRIMA FACIE CASE

[38] To determine whether the prosecution had made out a prima facie case I also took into consideration the following after evaluating the evidence that came out in the examination in chief and in cross examination during the case for the prosecution namely:

(1) The accused was alone in the guardhouse of the Pencawang TNB on the morning of 17 January 2004 until the discovery of the naked body of the deceased together with her bicycle in the toilet of the guardhouse.

(2) When the brother ('PW11') and sister of the deceased went to the guardhouse during their search for the deceased in the morning of

17 January 2004 and enquired from the accused whether he had seen the deceased that morning he denied having seen her.

(3) When the brother ('PW11') and sister ('PW10') of the deceased asked the accused to let them into the Pencawang TNB to look for the deceased the accused refused.

(4) When the two police officers ('PW9 and PW17') together with the deceased's brother and sister arrived at the gate to the Pencawang TNB and requested the accused to be let into the Pencawang TNB he still refused them entry even though PW9 was in police uniform and the accused's employer/superior had instructed him to let him in.

(5) When the police officer finally climbed over the gate of Pencawang TNB and approached the guardhouse the accused went into the guardhouse and held on to a long parang until he was disarmed physically by the police officer.

(6) The evidence of the chemist ('PW4') who conducted DNA tests on the exhibits seized from the guardhouse and from the accused after the discovery of the deceased that he found the accused's seminal fluid on the shorts found in the guardhouse and on the trousers worn by the deceased. The accused's seminal fluid was also on the blanket (selimut), bedsheet and towel seized from the guardhouse. Further, the blanket had a drop of the deceased's blood on it.

(7) The evidence of the pathologist, Dr Shahidan bin Md Noor ('PW1'), who confirmed that the deceased died as a result of manual strangulation and that the deceased had been sexually assaulted.

[39] I was of the considered view that the matters that I have referred to earlier, taken collectively, in the circumstances constituted a prima facie case against the accused that warranted the calling of the accused's defence to answer the charge against him. The behaviour and conduct of the accused was not, to my mind, consistent with that of a person who had had nothing to hide. Thus, I called for the accused's defence after I had reminded myself, and was mindful that there are no eye witnesses and in that sense the evidence against the accused is circumstantial evidence. In my view the cumulative effect of all the evidence led to the irresistible conclusion that it was the accused who committed the crime. (See *Sunny Ang v Public Prosecutor* [1966] 2 MLJ 195).

UNSWORN STATEMENT

[40] After the three options available to an accused person in such circumstances were explained to the accused both in Bahasa Malaysia and in Tamil the accused opted to make an unsworn statement from the dock. The statement, at the accused's request, was in type written form in Bahasa Malaysia. The statement was read and explained to the accused by the court's interpreter both in Bahasa Malaysia and in Tamil and upon the accused

confirming the same together with an addition to it by him, orally, that Suyaimi ('PW23') was also employed as a security guard in Pencawang TNB. With this addition the accused signed the statement and it was then marked as exh D24.

[41] For completeness I set out below the entire statement which is as follows:

'Nama saya Mohd Abbas bin Danus Baksan. Saya berasal daripada Bidor, Perak. Saya sebelum ini bekerja di Gemilang Security sebagai Pengawal Keselamatan diPencawang TNB, Kg Pekajang, Tg Kupang daripada 13 Oktober 2003 hingga 17 Januari 2004.

Dalam jam lebih kurang pukul 9pagi 17 Januari 2004, semasa saya berada dibahagian luar pagar Pencawang TNB, Ngengel bawa basikal kuning jenis ada gear bersama seorang budak perempuan yang naik basikal biru. Kemudian dia bawa budak perempuan itu masuk ke dalam kawasan Pencawang TNB itu. Ngengel telah membawa budak perempuan itu masuk ke dalam pondok pengawal keselamatan yang ada di situ. Saya masuk ke dalam pondok itu. Saya tanya dia siapa budak perempuan itu. Jawab Ngengel, dia adalah anak saudaranya. Selepas itu dia bagitau saya yang kawannya seorang lagi yang bernama Jojo akan datang dari Kg Tiram Duku.

Saya kemudiannya keluar semula ke bahagian luar pagar kawasan itu. Dalam pukul 9.10 minit pagi hari yang sama, Jojo datang bawa motor RXZ warna hitam nombor pendaftaran saya tak ingat. Dia datang seorang sahaja. Apabila Jojo sampai, dia masuk ke dalam kawasan Pencawang TNB dan saya pun ikut masuk, kunci pintu pagar dan terus masuk dalam pondok bersama Jojo. Masa itu saya nampak Ngengel baring di atas budak perempuan itu di atas pangkin papan yang ada di dalam pondok tersebut. Dia tak pakai seluar dan baju. Dua tangannya saya nampak sedang mencekik leher budak perempuan itu sambil main. Maksud saya main ialah dia merogol budak itu. Kejadian itu berlaku lebih kurang 5 minit. Masa Ngengel main, budak itu juga tidak berpakaian. Budak itu dalam keadaan berbaring dan tidak bersuara. Selepas itu, Ngengel bangun dan mengambil basikal biru kepunyaan budak perempuan itu dan meletakkannya di dalam bilik air yang berada di dalam pondok berkenaan.

Kemudian saya cuba main budak itu tetapi budak itu tak bergerak. Saya tak pasti sama ada kemaluan saya masuk ke dalam kemaluannya atau tidak sebab keadaannya budak perempuan itu tidak bergerak dan bersuara. Saya cuma menggesel-gesel kemaluan saya sehingga air mani saya terpancut. Masa itu saya memegang bahu kiri budak perempuan itu dengan tangan kanan saya. Kemudian saya bangun dan saya nampak Jojo pula baring di atas budak perempuan itu. Jojo pakai baju tanpa seluar. Saya nampak Jojo pun meletakkan tangannya di bahagian leher budak itu. Masa itu saya berada di dalam pondok itu.

Lebih kurang jam 9.20 minit, Jojo bangun, Ngengel kemudiannya dukung budak itu dan meletakkannya di dalam bilik air dalam keadaan mencangkung. Kemudian dia tutup pintu bilik air, selepas itu dia pun keluar bersama Jojo naik motosikal RXZ Jojo. Ngengel bagi tau yang sekejap lagi dia akan datang semula. Selepas dia keluar, saya pun kunci pintu pagar. Saya terus masuk dalam pondok, duduk atas kerusi merah. Lebih kurang 5 minit kemudian, ada sebuah kereta Proton Wira warna putih datang dan seorang lelaki dan 2 orang perempuan panggil saya. Saya pun pergi depan pintu pagar. Saya pun tanya dia sebab apa. Dia bagi tahu saya, dia nak masuk sekejap dalam pondok pengawal. Saya tak bagi dia masuk dalam kawasan itu. Saya

kata kalau nak masuk, bawa polis. Dia cakap dia nak masuk sekejap sahaja tetapi saya kata tak boleh.

Mereka kemudiannya beredar. Lepas itu, kawan saya nama Among datang jumpa saya, dia bawa saya pergi Tiram Duku tempat Jojo dan saya beli heroin satu tiub harga RM20. Saya ada jumpa Jojo di situ dan saya tanya mana Ngengel. Jojo kata dia dah balik ke rumahnya. Saya pun balik ke kawasan pencawang TNB semula naik motor dengan Among. Saya masuk ke dalam kawasan TNB, kunci pintu pagar lepas tu kereta putih itu datang lagi lebih kurang dalam pukul 1 tengahari bersama seorang polis beruniform dan seorang lagi tidak. Lelaki yang bawa kereta putih itu pun ada sama. Mereka nak masuk saya tak bagi sebab orang kampung ramai. Saya kemudiannya bagi nombor telefon pengurus saya iaitu Mohamad Saad. Polis ada telefon kemudiannya dia bagi telefon itu kepada saya. Mohamad Saad bagi masuk. Saya tak buka pintu pagar kerana orang kampung sudah ramai. Saya terus masuk dalam pondok, duduk atas kerusi plastik merah. Saya nampak lelaki yang bawa kereta putih itu panjat pagar bersama polis. Orang lain juga ada panjat sama. Kemudian polis itu masuk dalam pondok, dia buka bilik air, orang kampung pun sudah masuk dalam. Dia tanya dalam bilik air itu ada apa. Terus orang kampung pukul saya dan ada seorang polis tolong saya. Saya ada bagi tahu yang ada seorang lagi nama Ngengel ada terlibat dan ada bersama saya pagi itu. Tak lama kemudian, saya nampak ada sebuah kereta datang ke kawasan pencawang TNB itu kemudian ada polis tanya adakah lelaki yang telah ditangkap berada dalam kereta itu namanya Ngengel. Saya kata Ya. Kemudian polis tanya lagi ada siapa lagi, saya cakap lagi seorang nama Jojo. Saya kemudiannya dibawa oleh polis ke Tiram Duku tanya sama orang kampung mana Jojo yang ada di situ sebentar tadi. Orang-orang di sana bagi tahu yang dia telah melarikan diri bila nampak polis. Polis tanya mana rumah dia kemudian orang kampong tunjuk rumah dia. Dalam rumah itu dia sudah tiada dan ditinggalkan kosong. Saya dan Ngengel kemudiannya di bawa ke Balai Polis Tanjung Kupang dan masuk lokap. Lepas itu saya masuk lokap Balai Polis Skudai.

Saya tidak bunuh budak perempuan itu. Saya tak ada niat nak bunuh dia. Orang lain yang bunuh tak kan saya nak tanggung.

Itu sahaja kenyataan saya.'

[42] To the above must be added a sentence to the effect that Ngengel ('PW23') was also employed as a security guard at Pencawang TNB, Kampong Pekajang, Tanjung Kupang, Gelang Patah, Johor.

CASE FOR THE DEFENCE

[43] Throughout the prosecution's case the defence took the position that it was Suyaimi (PW23) who had raped and killed the deceased on 17 January 2004. Then in the statement (D24) of the accused, the accused again points the finger at PW23 and also one other person by the name of 'Jojo' who, according to the accused, was a friend of PW23. However this allegation of Jojo being involved in the rape and death of the deceased or of him being PW23's friend was never put to PW23 by the defence when he gave his evidence.

[44] In an attempt to connect PW23 to the death of the deceased and to show that he was present at the guardhouse on 17 January 2004, the defence made much of a yellow bicycle found outside the guardhouse but within the compound of Pencawang TNB on 17 January 2004 by the Investigating Officer

(PW26) when he went there in the course of his investigation into the death of the deceased implying that that yellow bicycle was actually PW23's bicycle as he too had a yellow bicycle. However, when PW23 was cross examined the learned defence counsel had, in fact, put to him that after PW23 had killed the deceased he had gone back home on his yellow coloured bicycle thereby negating any link between the yellow bicycle found in the Pencawang TNB's premises on 17 January 2004 when the Investigating Officer ('PW26') went there on the said day and PW23 and his yellow coloured bicycle.

[45] Even though the accused's statement (D24) is an unsworn statement from the dock it, nevertheless, must be given due consideration by me (see *Mohamed Salleh v Public Prosecutor* [1969] 1 MLJ 104; *Ng Hoi Cheu & Anor v Public Prosecutor* [1968] 1 MLJ 53).

[46] However, the weight to be attached to the contents of an unsworn statement would be less than that for sworn evidence from the witness's box tested by cross examination. (See *Mohamed Salleh v Public Prosecutor*, *Masroni bin Ahmad Rafi v Public Prosecutor* [1996] MLJU 584).

[47] In the accused's statement he denies that he killed the deceased and tries to deflect the charge by shifting the act of murder on to PW23 or that unknown person who the accused names as 'Jojo'. However, there is no evidence that PW23 or Jojo were present in the guardhouse on 17 January 2004 before the body of the deceased was found. In fact, when PW23 was cross examined by the learned defence counsel the issue of Jojo being PW23's friend or of Jojo's alleged presence on 17 January 2004 in the guardhouse together with PW23 were not raised at all.

[48] Further, the accused added on to his statement by stating that PW23 was also employed as a security guard at the Pencawang TNB at the material time. This was another subtle attempt by the accused to shift the blame for the death of the deceased on to PW23 when, in fact, the question of whether PW23 was employed at the Pencawang TNB was not at all put to PW23 when he was cross examined. It was also not put to PW26, the investigating officer, at all. Thus, there is no basis for the accused to state that PW23 was also employed at the Pencawang TNB. This is an afterthought.

[49] The accused goes further in his statement to state that after PW23 and Jojo had sexually attacked the deceased PW23 left the Pencawang TNB on Jojo's motorcycle. This was also not put to PW23 in the course of his cross examination. On the contrary, learned defence counsel had put to PW23 that after he had killed and sexually attacked the deceased he had, in fact, left the Pencawang TNB to go home on his (PW23's) yellow coloured bicycle.

[50] The accused stated in his statement that he was taken to Tiram Duku after his arrest before being taken to the Tanjung Kupang police station whereas the evidence of the prosecution was that he was taken to Tg Kupang police station after his arrest and there is no evidence about being taken to Tiram Duku. Be that as it may, this part of the accused's evidence from the

dock was not even put to the prosecution's witnesses, particularly to the Investigating Officer ('PW26').

[51] Learned counsel for accused in his submission, argued that the existence of three persons (including the accused) referred to in the accused's statement is not something which had been made up or an 'afterthought defence'. He referred to the committal proceedings of this case in the magistrate's court wherein the initial charge against the accused stated that the accused was charged together with two others who were still at large. Learned counsel argued that the charge in the magistrate's court must have been framed after a full and thorough investigation and, thus, that that the accused was not the only one alleged to be involved in respect of the crime is a 'clear true fact'. However, this aspect of the initial charge against the accused in the magistrate's court was not put to the Investigation Officer (PW26) at all in cross examination. The records of the committal proceedings and, in particular, the charge therein are not exhibits or evidence in this court. The defence ought to have adduced evidence or cross examined the relevant prosecution witness (eg PW26) on this if it was going to be made an issue or be relied upon to support some contention.

DECISION

[52] It is, in my humble view, quite clear that the accused was merely trying to tailor his defence in an attempt to create doubts about the prosecution's case knowing full well, having opted to give his evidence in the form of an unsworn statement from the dock, that his story cannot be tested by cross examination. The end result of his statement is just a mere denial and assertions not supported by evidence. It is trite that mere denial without other proof to reasonably dislodge the evidence presented by the prosecution is insufficient to inject reasonable doubt into the prosecution's case (see *Public Prosecutor v Ling Tee Huah* [1982] 2 MLJ 324).

[53] In *Public Prosecutor v Saimin & Ors* [1971] 2 MLJ 16, Sharma J explained what 'reasonable doubt' means as follows:

> The following definition of 'reasonable doubt' is often quoted:
>
> > 'It is not mere possible doubt, because everything relating to human affairs and depending upon moral evidence is open to some possible or imaginary doubt. It is that state of the case which after the entire comparison and consideration of all the evidence leaves the minds of the jurors in that condition that they cannot say they feel an abiding conviction to a moral certainty of the truth of the charge.'
>
> It has again been said that 'reasonable doubt' is the doubt which makes you hesitate as to the correctness of the conclusion which you reach. If under your oaths and upon your consciences, after you have fully investigated the evidence and compared it in all its parts, you say to yourself I doubt if he is guilty, then it is a reasonable doubt. It is a doubt which settles in your judgement and finds a resting place there'. Or as sometimes said, it must be a doubt so solemn and substantial as to produce in the minds of the jurors some uncertainty as to the verdict to be given. A reasonable doubt must be a doubt arising from the evidence or want of evidence and cannot be an imaginary doubt or conjecture unrelated to evidence.

[54] Denning J (as he then was) described in the case of *Miller v Minister of Pensions* [1947] 2 All ER 372 his view of 'reasonable doubt' and the degree of proof required in criminal cases as follows, at p 373:

> … That degree is well settled. It need not reach certainty, but it must carry a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond the shadow of a doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour which can be dismissed with the sentence 'of course it is possible, but not in the least probable', the case is proved beyond reasonable doubt, but nothing short of that will suffice.

(See also *Liew Kaling & Ors v Public Prosecutor* [1960] MLJ 306).

[55] The prosecution's case has established the ingredients of offence under s 300 of the Penal Code in that:

a) the deceased, Nurul Huda bte Gani, had died;

b) such death had been caused by or in consequence of, the act of the accused (ie manual strangulation);

c) such act was done by the accused with the intention of causing death; or the act was sufficient in the ordinary course of nature to cause death; or the accused caused death by doing an act known to him to be so imminently dangerous that it must in all probability cause death.

[56] The accused strangled the deceased with his hand by pressing on her neck knowing that this pressure to the neck can lead to her death ie by manual strangulation in this case. In *Virsa Singh v State of Punjab* AIR 1958 SC 465 the Supreme Court of India in dealing with inference of intention from the injury expressed the following view:

> In considering whether the intention was to inflict the injury found to have been inflicted, the enquiry necessarily proceeds on broad lines as, for example, whether there was an intention to strike at a vital or a dangerous spot, and whether with sufficient force to cause the kind of injury found to have been inflicted. It is, of course, not necessary to enquire into every last details as, for instance, whether the prisoner intended to have the bowels fall out, or whether he intended to penetrate the liver or the kidneys or the heart. Otherwise, a man who has no knowledge of anatomy could never be convicted, for, if he does not know that there is a heart or a kidney or bowels, he cannot be said to have intended to injure them. Of course, that is simple and based on common sense the kind of inquiry that 'twelve good men and true' could readily appreciate and understand.

[57] Having carefully reconsidered the evidence adduced by the prosecution and the unsworn evidence given by the accused through his statement from the dock and for the reasons I have given I am satisfied that the accused has failed to cast a reasonable doubt on the prosecution's case in respect of the charge against him. I hereby find him guilty of having murdered Nurul Huda bte Gani (the deceased) on the date, between the times and at the place mentioned in the charge. Accordingly, I find him guilty as charged and convict him on the charge.

[58] This is, indeed, a tragic case. The accused had snuffed out the life of a young innocent little girl just to satisfy his lust.

SENTENCE

[59] The only sentence which I am allowed to pass in respect of the charge against the accused is the sentence of death. Accordingly, as required by s 277 of the Criminal Procedure Code, I direct that the accused be hanged by the neck till he is dead.

Accused convicted.

Reported by Jasbender Kaur